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IN THE

Supreme Court of the United States

October Term, 1960

No. 460

ANTHONY PETER RIELA,

Petitioner,

—v.—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

PETITIONER'S REPLY BRIEF

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The respondent's misstatements of law and illogical deductions require the submission of this Reply Brief.

POINT I

Petitioner, a New York non-resident grand jury witness, was not accorded due process.

A. Petitioner's conduct before the New York Grand Jury was not a completed contempt.

The respondent asserts that contempt may be committed before a court, agency or officer. However, *the indictment here alleges the crime of criminal "contempt of court"—not contempt of a grand jury.*

"The grand jury is an arm of the court but it is not the court". *Spector* v. *Allen*, 281 N. Y. 251, 258. The direction

of the foreman of the grand jury is not a mandate. *Specht* v. *Allen*, 281 N. Y. 251, 260.

In the instant case, no court direction was made directing the non-resident witness to answer grand jury questions after he asserted his plea of privilege against self-incrimination. That such command is vital to the commission of a contempt is beyond dispute. *Brown* v. *United States*, 359 U. S. 41, 49; *Raley* v. *Ohio*, 360 U. S. 423, 444; *Quinn* v. *United States*, 349 U. S. 155, 167-168; *Hoffman* v. *United States*, 341 U. S. 479, 486.

Speaking of the direction as prerequisite to prosecution for contempt, Mr. Chief Justice Warren, in *Quinn* v. *United States*, 349 U. S. 155, 167-168 declared:

> "*In this country, the tradition has been uniformly recognized in the procedure of both federal and state courts.*" (Citing footnote authorities.) (Emphasis supplied)

The grand jury here was authorized to confer immunity only after a direction that a witness answer. However, it does not have statutory authority to render a judicial interpretation on a plea of privilege against self-incrimination especially where a resident of a foreign state is involved. This is the province of the court alone. *Hence*, the lack of hearing on the constitutional plea is obviously a denial of due process.

B. As to petitioner's offers of proof.

The Trial Court's refusal to permit the petitioner to prove the lack of authority, jurisdiction and good faith of the grand jury, the existing perils of prosecution, and inadequacy of immunity, constituted a denial of due process.

Authority and jurisdiction must always be established and if attacked, proof must always be permitted—within the rules of evidence. This also applies to existing perils of prosecution where a plea of privilege is asserted. When the court denied these rights to petitioner, it denied him due process. *Hoffman* v. *United States*, 341 U. S. 479, 486; *Carlson* v. *United States*, 209 F 2d 209 (C.A. 1st Cir.); *Gendron* v. *Burnham*, 146 Me. 387, 405-406, 82 A. 2d 773, 784-785.

C. As to Section 618-a of the Code of Criminal Procedure.

The order referred to by respondent is not a part of the certified record on appeal herein. It should be disregarded.

The petitioner's alleged waiver, if any, was obtained by application of such order. If, as a result of the illegal use of § 618-a C.C.P., certain actions are now asserted as binding on petitioner, then petitioner claims that § 618-a was used as an *entrapment* to compel his appearance in this jurisdiction.

The initial use of § 618-a C.C.P. to obtain the presence in New York of a non-resident witness is improper when the alleged witness is a potential defendant.

POINT II

The immunity allegedly conferred was not co-extensive with the existing perils of prosecution.

No case involving the grant of New York State immunity to a New Jersey resident who is a New York grand jury witness, under the facts and circumstances herein involved, has ever been reported.

Respondent makes much comment of *Mills* v. *Louisiana*, 360 U. S. 230 (1959). However, there a Louisiana resident was offered immunity in his home state. *A study of the lower court record in Mills v. Louisiana establishes that Mills was directed by the Court to answer grand jury questions. This direction was made in the form of a written order.*

Further, *Mills* v. *Louisiana*, did not involv a non-resident or statute (§ 7051 *et seq.* Unconsol. Laws) authorizing co-operation between the New York Commission of Investigation, other states, and the Federal government, and where grand jury minutes have been transmitted to various authorities pursuant thereto.

CONCLUSION

The petition for certiorari to the County Court of Tioga County, State of New York, should be granted.

Respectfully submitted,

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